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Fox Entertainment Group, LLC, Twentieth
Century Fox Film Corp., FoxNext, LLC, and
Defendant Twenty-First Century Fox, Inc.*

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

GENTING MALAYSIA BERHAD, a
Malaysia corporation,

Plaintiff,
v.

FOX ENTERTAINMENT GROUP, LLC, a Delaware corporation; TWENTIETH CENTURY FOX FILM CORPORATION, a Delaware corporation; TWENTY-FIRST CENTURY FOX, INC., a Delaware corporation; FOXNEXT, LLC, a Delaware corporation; and THE WALT DISNEY COMPANY, a Delaware corporation.

Defendants.

CASE NO. 2:18-cv-9866-FMO-JPR

FOX DEFENDANTS' COUNTERCLAIMS FOR:

1. BREACH OF CONTRACT

2. BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING

DEMAND FOR JURY TRIAL

1 FOX ENTERTAINMENT GROUP,
2 LLC, a Delaware corporation;
3 TWENTIETH CENTURY FOX FILM
4 CORPORATION, a Delaware
corporation; and FOXNEXT, LLC, a
Delaware corporation,

5 Counter-Plaintiffs,

6 v.
7 GENTING MALAYSIA BERHAD, a
8 Malaysia corporation,

9 Counter-Defendant.

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13 **FOX DEFENDANTS' COUNTERCLAIMS**

14 Counter-Plaintiffs Fox Entertainment Group, LLC, Twentieth Century Fox Film
15 Corporation, and FoxNext, LLC (collectively, “Fox”), by their attorneys, bring these
16 claims to vindicate their contractual rights against Counter-Defendant Genting
17 Malaysia Berhad (“Genting”), and to recover damages for Genting’s repeated and
18 flagrant breaches of contract. In support thereof, Fox hereby alleges as follows:

19 **INTRODUCTION**

20 1. This dispute arises out of Genting’s failure to honor its contractual
21 commitments to Fox to build and operate a “first-class, world-class” Fox-branded
22 theme park (the “Park”) at Resorts World Genting in Genting Highlands, Malaysia, in
23 accordance with agreed-upon approval processes and deadlines.

24 2. At the center of that contract, Fox agreed to license to Genting the right to
25 use certain Fox intellectual property—including the Fox name and that of a number of
26 its popular motion pictures, such as *Planet of the Apes*, *Independence Day*, *Ice Age*,
27 *Alien*, and *Predator*—for use in the Park and its attractions. Genting, in turn, was to

1 design, build, and operate the Park in accordance with certain quality standards, and to
2 provide Fox with certain compensation.

3 **3.** Fox World was to be Fox's first Twentieth Century Fox-branded theme
4 park. Because Fox's business is built upon its valuable consumer-facing brands and
5 intellectual property, which require substantial investment and vigilant protection
6 against tarnishment, Fox insisted on obtaining, and did obtain, extensive, carefully
7 negotiated approval rights, requiring its written approval for all attractions in the Park,
8 at each key stage of development, in addition to a rigid milestone schedule that
9 Genting was required to achieve. These contractual rights had teeth in the form of
10 prompt termination if Genting failed to deliver on its many promises. The stringent
11 quality and timeline requirements also served the important purpose of providing
12 comfort to Fox that it could entrust its intellectual property to Genting, which, if
13 successful, would be the Fox World operator and brand steward for decades to come.

14 **4.** Time after time, Genting failed its commitments by ignoring the quality
15 standards set forth in the agreement, Fox's approval rights, and its deadlines.

16 **5.** The fault for these failures lies with Genting, and Genting alone. As
17 detailed below, Genting's failures to adhere to its obligations and deliver on the
18 agreed-upon schedule resulted from a mixture of Genting's incompetence,
19 inexperience, and rank indifference to its contractual obligations. Genting often
20 constructed attractions without regard to Fox's contractual approval rights, sometimes
21 without the approved design development drawings, or even schematic drawings, that
22 were required to precede construction, and at times in a manner inconsistent with
23 approved designs for the attractions. Indeed, Genting began construction on all or
24 nearly all of the Park's 83 elements without first completing design development
25 drawings. Because it often proceeded without plans, approval, or much thought at all,
26 Genting built buildings that were too tall for the themed façades constructed to house
27 them, built parade floats that were so large that they left no room on the street for
28 spectators, built an attraction without including the designed (or any) evacuation route,

1 and routinely had to retrofit, if not tear down, its prematurely built structures to
 2 accommodate either Fox’s approved plans or the intended use of the project. At other
 3 times, Genting simply changed approved attractions at the whim of its Chairman,
 4 including changing the Park’s planned central design element—the iconic Twentieth
 5 Century Fox logo and accompanying fountain—requiring further design, a further
 6 approval process, and further delays.

7 **6.** Fox twice granted Genting extensions for the project, and when it became
 8 apparent that Genting would miss even those deadlines, Fox negotiated in good faith
 9 for the terms of a third extension that would have provided it with additional
 10 protections in light of its increasing concerns about Genting’s fitness as a partner.
 11 When Genting declined to enter into that agreement, Fox exercised its contractual right
 12 to terminate the project. Genting’s repeated failure to meet its contracted-for
 13 deadlines, and the reasons for those failures—mismanagement, shoddy construction
 14 practices, and failure to seek Fox’s required approval before proceeding with
 15 construction—demonstrated that it lacked the commitment or competence required of
 16 a partner who would effectively serve as a steward of the Fox brand, potentially for
 17 decades. As a result of that termination, pursuant to the agreed-upon terms of the
 18 parties’ contract, Fox is entitled to a termination payment in excess of \$45 million.

19 **7.** Rather than honor its contractual commitments and pay Fox, Genting filed
 20 a lawsuit blaming Fox for the delays and Twenty-First Century Fox, Inc. (“21CF”) and
 21 the Walt Disney Corporation (“Disney”) for Fox’s decision to terminate. Both claims
 22 are false, but it is not surprising that Genting made them. Genting has consistently
 23 blamed others for its own failure to adhere to its contractual obligations—whether they
 24 related to quality, deadlines, Fox’s approval, or its overdue termination payment to
 25 Fox. Genting’s strategy was laid bare in a 2018 communication from one of Genting’s
 26 own senior creative managers:

27 *“It’s very clear now [that] the chairman [of Genting] does not care about what*
 28 *Fox think[s]; he will just slap it up and fight you later.”*

8. It is precisely because of that strategy that Fox was forced to terminate the project and is now forced to bring these counterclaims.

THE PARTIES

9. Counter-Plaintiff Twentieth Century Fox Film Corporation (“TCFFC”) is a Delaware corporation with its principal place of business in Los Angeles, California.

10. Counter-Plaintiff Fox Entertainment Group, LLC (“FEG”) is a Delaware corporation with its principal place of business in Los Angeles, California. Prior to July 23, 2015, FEG was known as Fox Entertainment Group, Inc. Twentieth Century Fox Licensing & Merchandising was the signatory to each of the primary contracts with Genting, as a division of FEG, and as Administrator for TCFFC.

11. Counter-Plaintiff FoxNext, LLC is a Delaware corporation with its principal place of business in Los Angeles, California. FoxNext was registered as of April 7, 2017. FoxNext is a subsidiary of FEG that has managed the Park development for Fox.

12. Counter-Defendant Genting Malaysia Berhad is a Malaysian company whose principal place of business is in Malaysia. Genting is the developer of the Park.

JURISDICTION AND VENUE

13. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332 because there is complete diversity of citizenship and the amount in controversy exceeds \$75,000.

14. This Court has personal jurisdiction over the Counter-Defendant pursuant to California Code of Civil Procedure § 410.10 by consent. Genting filed its Complaint in this Court. In addition, Genting consented to personal jurisdiction and venue in the courts of the State of California for “all actions, proceedings, or litigation arising from the [MOA]” and agreed that the MOA “shall be deemed executed in Los Angeles, California” and that it “shall be construed and enforced in accordance with the laws of the State of California governing contracts to be wholly performed in California.” MOA § 14(h).

GENERAL ALLEGATIONS

A. Fox and Genting Enter into the MOA To Develop a “First-Class, World-Class” Fox-Branded Theme Park in Malaysia.

15. On June 1, 2013, Fox and Genting entered into a memorandum of agreement (“MOA”) whereby Fox would license certain of its intellectual property to Genting, which would develop and operate a theme park in Genting Highlands, Malaysia, to be known as 20th Century Fox World (Malaysia).

16. The Park was to be a “first-class, world-class” development, featuring dozens of attractions based on Fox’s blockbuster films and franchises like *Alien*, *Ice Age*, *Independence Day*, *Night at the Museum*, *Planet of the Apes*, and *Predator*, among many others. MOA § 3(c).

17. The MOA contained multiple provisions that were integral to the timely development of the Park, including provisions relating to Key Milestone deadlines, quality standards, and Fox's approval rights. All of these provisions were crucial to ensuring the timely development of the Park at a level that was acceptable to Fox and commensurate with its quality and intellectual property requirements, and to serve as a check on whether Genting had the capability and commitment to serve as a steward for the Fox brand.

a. **Key Milestones.** The MOA provided that “[i]t is of the essence” that Genting meet certain “Key Milestones” “in connection with the design, construction and opening of” the Park. MOA § 3(a)(i). The MOA was unmistakably clear that Genting’s adherence to the Key Milestone deadlines was of the utmost importance. In fact, the MOA gave Fox the right to terminate the contract “in its sole discretion” should Genting fail to meet any of these deadlines. MOA § 3(a)(ii). Specifically, the MOA provided that: “If any of the [Key Milestones] are not met due to any delay, action or omission on the part of [Genting], . . . (A) the entire Development Fee shall be forfeited by [Genting] and (B) Fox may elect in its sole discretion to terminate this

1 Agreement . . . upon written notice to [Genting], in which case the Agreement shall
 2 cease to have any further force and effect . . . ” *Id.*

3 b. The original deadlines for these Key Milestones were defined in the MOA
 4 as follows:

5 i. **Initial Designs and Concepts:** By November 1, 2013, Genting
 6 was required to submit to Fox for approval the initial designs and
 7 concepts for the Park. MOA § 3(a)(i)(B).

8 ii. **Design Development:** By January 1, 2013, Genting was required
 9 to submit detailed designs of the Park for final approval by Fox.
 10 MOA § 3(a)(i)(C).

11 iii. **Beginning of Construction:** By March 1, 2013, Genting was
 12 required to begin construction of the Park. MOA § 3(a)(i)(D).

13 iv. **Soft Opening:** By May 31, 2016, Genting was required to
 14 complete the “Soft Opening” of the Park, MOA § 3(a)(i)(E), i.e.,
 15 the “public opening of eighty percent (80%) of the combined
 16 attractions of the Fox Branded Theme Park,” MOA § 1(r).

17 v. **Official Opening:** By June 1, 2017, Genting was required to
 18 officially open the Park. MOA § 3(a)(i)(E).

19 c. These deadlines, and the stringent enforcement provisions, served a dual
 20 purpose: (1) to motivate Genting to keep to the agreed-upon schedule; and (2) to serve
 21 as a check on whether Genting was performing at the level Fox would expect for a
 22 partner that was to serve as a steward of its brand and intellectual property for at least a
 23 decade.

24 d. **Quality Standards.** Other provisions of the MOA required that Genting
 25 “shall design, construct, operate and maintain” a “first-class, world-class” theme park
 26 “in accordance with the highest standards” used in its other parks, including Universal
 27 Studios Singapore. MOA § 3(c), (d). Genting was contractually obligated to protect
 28 the Park’s quality in multiple ways, including:

- 1 i. **Standard of Operation:** Genting was required to “design,
2 construct, operate and maintain throughout the Term the Fox
3 Branded Theme Park and, if applicable, such areas of the Resort
4 that utilize the Fox Property, and otherwise utilize the Fox
5 Property, in accordance with the highest standards (including,
6 without limitation, health and safety standards) it generally applies
7 to its own properties used in other Theme Parks operated by GENM
8 or GENM Affiliates (e.g., Universal Studios Singapore).” MOA
9 § 3(d).
- 10 ii. **Capital Expenditure:** Genting was also required to “spend on the
11 initial capital expenditure to build out the Fox Branded Theme Park
12 such sums as may be necessary to create a first-class, world-class
13 level themed area in accordance with the highest standards
14 (including, without limitation, health and safety standards) it
15 generally applies to its own properties used in other Theme Parks
16 operated by GENM or GENM Affiliates (e.g., Universal Studios
17 Singapore).” MOA § 3(c).
- 18 iii. **Quality Control:** Genting was also required to “maintain quality
19 control standards commensurate with industry practice for all
20 approved elements of the Fox Branded Theme Park during all
21 stages of development and mounting of the Fox Branded Theme
22 Park.” MOA § 3(b)(ii).

23 **18. Approvals:** One of Fox’s most important contractual checks on Park
24 quality was that Genting had to secure Fox’s written approval through each of the key
25 “stages of development,” including Design Firm Approval, Preliminary and Schematic
26 Design Approval, Design Development, Themed Element Production, and Installation.
27 MOA § 3(b). These approval rights were extensive, and they were carefully negotiated
28 by Fox in order to protect its valuable intellectual property. Thus, through each of the

1 key phases, Fox was required to approve in writing “**all [Park] content**, including all
 2 elements of the [Park] containing Fox Property and all elements of the [Park]
 3 containing generic elements, including the manner in which such generic elements are
 4 integrated or juxtaposed with the [Park].” MOA § 3(b)(ii) (emphasis added).

5 **19.** The MOA required Genting to strictly abide by Fox’s approval rights,
 6 with severe penalties for noncompliance. The MOA provided that “[o]nce a schematic
 7 design, concept, treatment design or themed element is approved by Fox, GENM shall
 8 not change, alter or modify such element from the approved version” without
 9 “additional Content Approval by Fox . . . at GENM’s sole cost and expense.” MOA
 10 § 3(b)(ii)-(iii). Similarly, Genting was permitted to install “**only** Fox-approved
 11 schematic, concept, treatment, design and themed elements,” with any required
 12 corrections “**at GENM’s sole cost and expense**.” MOA § 3(b)(iii)(A) (emphasis
 13 added). In addition, use by Genting of “Fox property in a manner not approved or
 14 deemed approved by Fox” was grounds for termination under the MOA, as was
 15 Genting’s “breach[of] any of its representations and warranties or defaults with regard
 16 to the performance of any of its obligations provided for in this Agreement in any
 17 material respect.” MOA § 11(a)(i),(vii).

18 **B. Genting’s Delays Require the Deadlines To Be Amended, Twice.**

19 **1. The First Amendment**

20 **20.** From the beginning of project, Genting proved itself unable to effectively
 21 manage the design and construction process such that it could meet its agreed-upon
 22 deadlines.

23 **21.** As late as December 2013—several months into the project—one of
 24 Genting’s senior creative designers confided to Fox that Genting still had not obtained,
 25 and was trying to hire, “a professional & theme-park experienced Project &
 26 Construction Management team to run the project.” Because Genting lacked
 27 competent project management at that time, the Genting designer explained, it had

1 fallen to the creative designers to “become the default project managers,” which
 2 prevented them from “being able to focus on delivering creativity & quality.”

3 **22.** As Fox ultimately came to learn, many of Genting’s problems came from
 4 the top—a Chairman and senior management that tossed around deadlines with neither
 5 an understanding as to whether Genting could actually meet those deadlines, nor a
 6 commitment to deploy the resources necessary to do so. In the words of that same
 7 Genting designer, “the realities of time needed to do good work are completely
 8 ignored” by Genting and its Chairman.¹

9 **23.** Less than a year after entering into the MOA, Genting’s mismanagement
 10 had caused the project to fall so far behind schedule that the MOA had to be
 11 renegotiated to extend the deadlines.

12 **24.** Effective June 10, 2014, Fox and Genting entered into an amendment to
 13 the MOA (“Amendment No. 1”) that extended each of the Key Milestone deadlines by
 14 several months. Specifically, the Key Milestones were extended as follows:

15 (1) August 1, 2014 for Genting to submit to Fox for approval the Park’s initial designs
 16 and concepts (an extension of 9 months from the MOA deadline); (2) January 1, 2015
 17 for Genting to submit to Fox for final approval the Park’s design development plans
 18 (an extension of 12 months); (3) February 1, 2015 for Genting to begin construction of
 19 the Park (an extension of 11 months); and (4) January 1, 2017 for the Park’s Soft
 20 Opening (an extension of 7 months). Amd. No. 1, § 2(d). In consideration for this
 21 Amendment, Genting agreed to increase Fox’s annual Development and License Fees
 22 by \$200,000 each. Amd. No. 1, § 2(c).

23
 24
 25 **¹** The designer also noted that, because the Chairman had approved the Park’s initial
 26 master plan so late (the first time—as described below, Genting disruptively amended
 27 it several times thereafter) it left the team with “not enough time to produce quality
 28 work and coordinate it all” on important design projects, including “zone POVs” and a
 “full aerial” of the Park. Genting’s timing expectations for those projects were so
 unreasonable that “Every known artist [Genting] approached declined based on the
 time frame.”

1 **2. The Second Amendment**

2 **25.** Unfortunately, Genting’s inability to meet its obligations persisted even
3 with the extended deadlines.

4 **26.** By way of example, although the Key Milestone deadline for Genting’s
5 submission of a Master Plan for the Park was extended in Amendment No. 1 to August
6 1, 2014, Genting struggled for nearly two years to finally agree upon and submit its
7 operative Master Plan.

8 **27.** The source of these delays was nothing but Genting’s own incompetence
9 and indecisiveness. In fact, even when Genting submitted its Master Plan and other
10 submissions to Fox for initial review and approval, Genting’s plans were so woefully
11 lacking in necessary, industry-standard detail—such as written descriptions, reference
12 plans and images, or notifications of changes from prior versions—that Fox was forced
13 to initially reject them and request additional information.

14 **28.** Even Fox’s conditional approvals could not save Genting from itself.
15 Despite the fact that Fox had given conditional approval to Genting’s first version of
16 its Master Plan in late August 2014, Genting decided to abruptly “start over” with
17 completely new Master Plans—a process that occurred on multiple occasions
18 throughout the next year. These repeated false starts caused the Park’s development to
19 flounder at the planning stages, leading to a cascading effect that substantially delayed
20 the Park’s design and construction.

21 **29.** Many of these changes were coming straight from Genting’s Chairman,
22 who took an active interest in the Master Plan, but little to none in the approval
23 process, and who would demand changes to approved designs without consulting Fox.
24 Each such change, regardless of how arbitrary or unnecessary, required additional
25 design work by Genting employees and a new round of approvals by Fox.

26 **30.** Genting’s delays had become so pervasive that although under the First
27 Amendment, Genting was to have submitted final design development drawings and
28

1 begun construction of the Park in 2015, by February 2016, Genting was still proposing
 2 revisions to the Master Plan.

3 **31.** It soon became evident to both parties that there was no hope of getting
 4 the project back on track and achieving any of the extended Key Milestone dates.
 5 Accordingly, Fox sent a senior team to Malaysia to discuss the future of the Park and
 6 the relationship between the parties moving forward.

7 **32.** During these meetings, Fox explained the broad scope of its approval
 8 rights under the MOA. The Fox team firmly conveyed its view that Genting was in
 9 breach of the Agreement, and that Genting's inability to stick to the contractual
 10 schedule was imperiling the viability of the project.

11 **33.** Fox strongly encouraged Genting to conduct an internal review of its
 12 involvement in the project to date. Genting agreed to do so, and assured Fox that
 13 Genting was capable of adhering to its contractual responsibilities and could meet an
 14 extended set of deadlines.

15 **34.** On June 9, 2017, the parties executed the Second Amendment to the
 16 MOA. That Amendment made several important changes to the MOA, including the
 17 following:

18 **35.** First, the Amendment extended the deadlines for the remaining Key
 19 Milestones. Specifically, the Key Milestones were pushed to: (1) March 1, 2018 for
 20 Genting to submit to Fox for final approval of the Park's design development plans (an
 21 extension of more than 3 years from the First Amendment deadline); (2) June 30, 2018
 22 for the Park's Soft Opening (an extension of 18 months); and (3) January 1, 2019 for
 23 the Park's Official Opening (an extension of 18 months). Amd. No. 2, § 2(e).²

25 **²** In addition, on information and belief, several of Genting's managers, including
 26 Steve Beyer, Anthony Reed, Marc Buczynski, and Foo Koh Poh believed that the
 27 proposed Key Milestones were not achievable, in particular for the Soft Opening.
 28 While negotiating with Fox, they agreed that an achievable Soft Opening date was
 November 2018. Nevertheless, when Genting presented the contract for the Second
 Amendment, Genting inserted a deadline of June 2018, which misled Fox into thinking
 that the more aggressive timeline was possible.

1 **36.** Second, the Amendment revised and increased the royalty “Guarantee
 2 Amounts” and “Annual License Fees” owed to Fox through the deal. Amd. No. 2,
 3 §§ 2(d),(g). This was effectively Genting’s consideration in exchange for Fox’s
 4 willingness to accept such a substantial extension.

5 **37.** Third, the Amendment increased Genting’s minimum required capital
 6 expenditure on the Park from \$130 million to \$600 million. Amd. No. 2, § 2(f).

7 **C. The Parties Enter into a Settlement Agreement**

8 **38.** At the same time the parties executed the Second Amendment, they
 9 entered into a mutual settlement and release agreement (the “Settlement Agreement”),
 10 which resolved all existing claims and disputes between Fox and Genting. In fact, full
 11 execution of the Settlement Agreement was an express condition precedent of the
 12 Second Amendment. Amd. 2, § 4.

13 **39.** The Settlement Agreement included a broad release covering the entire
 14 development to that point. It provided that Fox and Genting would release each other
 15 “from any and all claims, debts, liabilities, demands, judgments, accounts, obligations,
 16 promises, acts, agreements, costs, expenses (including but not limited to attorneys’
 17 fees), damages, actions and causes of action, of any kind or nature based on, arising
 18 out of, relating to or in connection with the MOA, up to but not including the Effective
 19 Date” of June 9, 2017. Settlement Agreement § 2.1.

20 **40.** The Settlement Agreement also included a “Promise Not to Sue,” in
 21 which the parties agreed “never to sue or otherwise bring any action, or judicial or
 22 other proceeding of any kind . . . regarding the Released Claims.” Settlement
 23 Agreement § 2.2.

24 **D. Genting’s Mismanagement and Contractual Performance Failures
 25 Continue.**

26 **41.** Despite Genting’s purportedly renewed commitment to achieving both
 27 quality and schedule, it soon returned to its old ways, missing deadlines, ignoring

1 Fox's contractual rights, and constructing the Park in a manner inconsistent with the
 2 "first-class, world-class" quality standards that it was obligated to deliver.

3 **1. Genting's Failure to "Design, Construct, Operate, and Maintain" the**
 4 **Park "In Accordance with the Highest Standards."**

5 **42.** The MOA required Genting to "design, construct, operate and maintain"
 6 the theme park "in accordance with the highest standards" that it used at other parks,
 7 including Universal Studios Singapore, MOA § 3(c), to deliver a "first-class, world-
 8 class" facility, *id.* § 3(d), and to "maintain quality control standards commensurate
 9 with industry practice for all approved elements of the Fox Branded Theme Park
 10 during all stages of development and mounting of the Fox Branded Theme Park," *id.*
 11 § 3(b)(ii).

12 **43.** Despite these requirements, Genting engaged in a design and construction
 13 process that delivered a product inconsistent with those standards.

14 **44.** Genting repeatedly constructed buildings and attractions either without
 15 any concern for approved plans or without plans at all. This approach required
 16 Genting to tear down, retrofit, or modify buildings to conform to plans. Rather than
 17 "measure twice, cut once," Genting's approach was essentially to cut without
 18 measuring at all, wait for someone to point out its errors, and then cut again and again
 19 until Genting either got it right or shrugged it off as close enough. Even when its
 20 errors were ultimately fixable, they nevertheless caused cascading delays in the
 21 construction schedule. For example:

22 a. ***Epic Boat Ride:*** The retail building associated with this ride was built
 23 two meters too tall, contrary to the approved plan, and too tall to fit within
 24 the specially constructed façade. Genting went through an extensive
 25 redesign process, ultimately deciding to lop off the top two meters of the
 26 building. The error caused months of delay.

27 b. ***Night at the Museum:*** Genting built the ride facility for this attraction
 28 one meter smaller than the approved design. That error had a domino

1 effect, as the designers had to reconfigure the props in the smaller space
 2 and reconfigure the queue into a space so narrow it barely passed safety
 3 requirements, which caused substantial delay.

- 4 c. ***Expedition Thin Ice:*** Genting incorrectly built the building housing this
 5 attraction, which was based on the popular *Ice Age* animated films.

6 Genting built the ceiling for the room housing the first “scene” two meters
 7 short and failed to account for the addition of MEP (mechanical,
 8 engineering, and plumbing), all of which required the characters to be
 9 dropped down one level, thus requiring further redesign and approval
 10 submissions. In addition, Genting did not properly install the “super-flat”
 11 floor required so that the ride vehicle could operate smoothly, apparently
 12 believing that a “somewhat-flat” floor was close enough. It was not. As a
 13 result, Genting was forced to regrind the floor, causing a delay of several
 14 weeks.

- 15 d. ***California Thunder Run:*** When Fox approved a 3D design for this
 16 interior attraction, it clearly featured an evacuation route for passengers in
 17 case of emergency. However, during construction, Genting incredibly
 18 neglected to build out any evacuation route. As a result, Genting had to
 19 go back and manually cut out rockwork to fix its mistake and create an
 20 evacuation exit, which caused a months-long delay. Those patchwork
 21 holes, not surprisingly, were inconsistent with the approved design and of
 22 poor quality. Fox also noticed massive paint leaching due to improper
 23 curing time of concrete, which adversely affected the painting surface.³

24 And the ride construction was further delayed by Genting’s failure to

25
 26
 27 ³ Genting had unacceptable paint quality problems throughout the Park. These also
 28 included, for example, ride vehicle paint issues (such as visibly bubbling paint) on the
Hummingbird Flyers, Robots Rivet Town, Colonial Fighter Pilots, Rio Carnaval
Chaos, and AVP Descent into Darkness attractions.

1 install the structural steel in a manner that would accommodate the ride
2 vehicle and a safe passenger perimeter (the “ride envelope”) together with
3 the approved theming elements, necessitating further change.

4 **45.** As shown both in these examples and further below, Genting’s shoddy
5 construction process fell far short of “first-class, world-class” construction practices
6 “in accordance with the highest standards.”

7 **46.** In other instances, Genting simply failed to deliver quality product or
8 failed to understand the intellectual property that it was putting to use. For example:

9 a. **Parade Floats:** One planned attraction at the Park was a large parade
10 with elaborate floats featuring various characters from Fox films. During
11 the approval process, Fox expressed concerns about the size of the floats
12 and the amount of street space they would occupy, but Genting assured
13 Fox that the floats would fit. They did fit in the streets, but only to the
14 exclusion of any pedestrians or viewers, defeating the purpose of the
15 floats. Genting’s operations personnel admitted the problem, but its Live
16 Entertainment team still refused to fix it.

17 b. ***Alien vs. Predator Dance Show:*** Demonstrating how little thought it
18 gave to the integrity of Fox’s intellectual property, Genting proposed
19 taking some of Fox’s most significant science fiction film properties—
20 *Alien, Predator, and Alien vs. Predator*—and using the main characters in
21 a cruise ship-style dance show, featuring a dancing Alien and Predator.

22 c. ***Fox Plaza:*** The construction of *Fox Plaza* was not only out of
23 conformance with approved design, but the quality was so poor that even
24 Genting’s own art directors agreed it was unacceptable, and refused to
25 approve it. Nevertheless, as was often the case, Genting declined to fix
26 the quality problems for months after Fox raised them.

1 **2. Genting's Repeated Design Changes and Failure To "Use Only Fox-**
 2 **Approved Schematic, Concept, Treatment, Design and Themed**
 3 **Elements."**

4 **47.** The MOA explicitly provided that "GENM installation at the Fox
 5 Branded Theme Park shall use only Fox-approved schematic, concept, treatment,
 6 design and themed elements." MOA § 3(b)(iii)(A) (emphasis added). Thus, as a
 7 fundamental requirement set forth in this provision and others like it, Genting was
 8 required to obtain Fox's complete written approval on designs before construction
 9 could commence on any particular attraction.

10 **48.** Despite this requirement, Genting repeatedly made material changes to
 11 approved designs and, at times, began building the new designs without obtaining Fox
 12 approval, even where the changes involved core Fox intellectual property. Indeed,
 13 Genting began construction on the Park before it had even a single design development
 14 plan approved. This practice resulted in numerous substantial delays.

15 **49.** For example, during a site walk in approximately January 2018, Genting's
 16 Chairman demanded that design changes be made to the Fox Icon Fountain in *Fox*
 17 *Plaza*—specifically, modifying the search lights incorporated into a statue of the 20th
 18 Century Fox logo. Ultimately, this resulted in late design changes and further delays.
 19 This was but one of several personal requests from the Chairman to change the
 20 fundamental Park design,⁴ requests that were consistent with his disregard for Fox's
 21 approval rights.

22 **50.** Similarly, Genting moved forward with construction of an *Independence*
 23 *Day*-based attraction (*ESD Global Defenders*) without first obtaining approved design
 24 development plans. Not only was the construction of poor quality, but the related

25
 26 ⁴ Other examples included: the redesign of the *Independence Day* attraction to
 27 accommodate an extra theater (after one was already built); a bridge from Genting's
 28 theme park hotel to the *Fox Plaza* attraction; and the addition of new VIP seating in
 the façade of the *California Thunder Run* attraction. All of these changes were
 disruptive, and caused significant delays.

1 queue building was built incorrectly and conflicted with the approved conceptual and
 2 schematic designs. These problems were so egregious that Genting had to tear down
 3 the building and rebuild it multiple times, causing months of delay.

4 **51.** Genting's substandard practice of constructing Park elements without
 5 approval, and in some cases without even design development drawings, caused
 6 substantial disruption to both attraction quality and Park schedule overall. It also
 7 provided increasing evidence that Genting cared little about its role in protecting the
 8 integrity of Fox's brand and its intellectual property.

9 **52.** By proceeding with construction without design development plans in-
 10 hand, Genting's construction team was necessarily making dramatic assumptions about
 11 how the various attractions—based on Fox intellectual properties—should look,
 12 without Fox's required creative input. Not surprisingly, and as explained further
 13 below, the practice resulted in not only egregious quality problems, but also substantial
 14 rework and delays.

15 **53.** Genting responded to Fox's complaints by reassuring Fox that the build-
 16 and-then-wait-to-see-if-anyone-complains approach was standard local Genting
 17 construction practice, and that Genting would subsequently take whatever steps were
 18 necessary to conform the attractions to fit Fox's approvals. For example, when these
 19 issues came to a head in late 2017, Genting sought to reassure Fox by offering the
 20 "Izwan Pledge," which was supposed to be a commitment from Genting executive
 21 Izwan Loke that the company would remediate any construction problems generated as
 22 a result of Genting's development ahead of approved designs.⁵

23 **54.** Despite Genting's recognition that its practices were inconsistent with the
 24 agreement, and despite regular escalation of these issues by Fox to Genting's Park

25
 26 ⁵ Of course, this was what Genting was contractually required to do anyway. The
 27 MOA explicitly provided: "If, during such installation, GENM seeks to change, alter
 28 or modify an approved element, such change, alteration or modification shall require
 additional Content Approval by Fox and shall be **at GENM's sole cost and expense.**"
 MOA § 3(b)(iii)(A) (emphasis added).

1 leadership,⁶ they persisted. As such, Fox called for a senior executive meeting in
 2 Malaysia in June 2018 to express its serious concerns to Genting’s leadership,
 3 including Genting’s President. At the meeting, Fox warned Genting that its rogue
 4 building practices were unacceptable, citing the following examples, among others:

- 5 a. ***Century City:*** Among other problems with this attraction, Fox warned
 Genting that while there was an approved design development package,
 Genting was conspicuously deviating from it, including, for example, with
 an entire new added floor to the mall, terraces, and restaurants that Fox
 had not approved. Nevertheless, Genting was permitting construction to
 continue. Fox was concerned that these developments were intended to
 be parasitic venues that would allow customers at an adjacent mall owned
 by Genting to observe the Park and Fox’s intellectual property, without
 actually entering as customers.
- 14 b. ***Planet of the Apes:*** While Fox approved a *Planet of the Apes* show
 schematic design in July 2017, Fox warned that it had still not received a
 schematic design for the facility that would house it. Genting
 nevertheless completed construction on the facility in 2018. This
 construction notably included an unauthorized elevator shaft to benefit
 Genting’s adjacent mall, damaging the aesthetics of the attraction façade.
 This was a shocking example of Genting’s willingness to simply “slap
 up” buildings based on core Fox intellectual property, for Genting’s own

24 6 In late 2017, worried about Genting’s chronic, unresolved quality concerns, Fox
 25 initiated a regular call with leadership from both sides to escalate and address these
 26 issues. For each call, Fox prepared and shared a detailed “Issues List” spreadsheet that
 27 tracked and prioritized problems at the Park. But even with escalation and visibility
 28 into issues at the Park, Genting still did not appropriately manage and remediate the
 pervasive quality problems. It was often the case that during the Issues List calls,
 Genting’s management would simply reply that each of the issues Fox flagged was
 “ongoing.”

1 purposes, without providing Fox the benefit of its contractually required
 2 approvals.⁷

3 c. **Secondary Entrance:** In September 2016, Fox approved the concept
 4 design for a secondary entrance to the Park (at the request of Genting’s
 5 Chairman). That approval was contingent in part upon it containing a
 6 “major 20th Century Fox World entry statement,” which had obvious
 7 brand value for Fox. Nevertheless, in 2018, Genting unilaterally, and
 8 without approval, filled the space that was supposed to house the Fox
 9 entry statement, again, on information and belief, at the instruction of
 10 Genting’s Chairman.

11 d. ***Scrat’s Nutty Adventure:*** Fox repeatedly informed Genting that it had
 12 inappropriately proceeded to build this premier attraction without
 13 obtaining proper approvals, including by removing scaffolding from
 14 around the mountain peak without proper review and approval from Fox,
 15 which left unacceptable, visible patchwork on the mountain façade.
 16 While Genting promised to eventually repair these divots, they were still
 17 present at the time of termination. In addition, the primary and secondary
 18 steel for the mountain, and primary steel for the ride itself, were
 19 incorrectly installed inside the ride envelope. As a result, both the
 20 mountain and ride steel had to be rebuilt, causing months of delay.

21 **55.** In this presentation, Fox also explicitly reminded the Genting executives
 22 of Genting’s contractual obligations pursuant to MOA § 3(d) to “design, construct,
 23 operate and maintain throughout the Term the Fox Branded Theme Park . . . in
 24 accordance with the highest standards,” and warned that Fox was seriously concerned

25
 26
 27 ⁷ Genting also built an unauthorized IMAX facility like a pillbox directly on top of the
 28 attraction facility, again for the apparently parasitic benefit of its mall customers,
 which undermined the aesthetics of the attraction and violated the contractual
 prohibition against using non-Fox IP in park boundaries.

1 about Genting's ability to fulfill its quality obligations, listing these and numerous
 2 other examples.

3 **56.** Genting compounded the problem by failing to take a proactive and
 4 collaborative approach toward approvals. Genting delayed for years in sharing
 5 information about the design of the Park, and even as the Park was under way, Genting
 6 generally refused to share construction plans with Fox, even when requested.

7 **57.** In July 2018, Fox learned that Genting's promises to abide by the
 8 approval terms set forth in the contract had been countermanded by the Chairman of
 9 Genting himself, and his senior leadership, like Izwan Loke. In July 2018, one of
 10 Genting's experienced senior creative managers warned Fox that "It's very clear now
 11 [that] the chairman does not care about what Fox think[s;] he will just slap it up and
 12 fight you later." He added that Genting's senior park executives Bill Collins and Greg
 13 Bryant "are part of that push." He noted that even though "I have drawings that will
 14 never work," "[B]ill demands we stop marking it up and he is instructing them to
 15 build." He emphasized that the direction to stop sharing designs with Fox was coming
 16 from "[G]enting high Management and it's all so corrupt."

17 **3. Genting's Failure To Spend "Such Sums as May be Necessary to**
 18 **Create a First-Class, World-Class Level Themed Area in Accordance**
 19 **with the Highest Standards" Used in Universal Studios Singapore.**

20 **58.** The MOA, as amended, also expressly required that Genting spend "such
 21 sums as may be necessary to create a first-class, world-class level themed area in
 22 accordance with the highest standards . . . it generally applies to its own properties
 23 used in other Theme Parks operated by GENM or GENM Affiliates (e.g., Universal
 24 Studios Singapore)," and in no event "less than \$600 million." MOA § 3(c); Amd. No.
 25 2, § 2(f).

26 **59.** On information and belief, Genting's capital investment at its Universal
 27 Studios Singapore theme park was substantially higher on both a raw basis and on a
 28 per capita basis when measured against anticipated attendance.

1 **60.** In addition, there were many instances where Genting made decisions to
 2 skimp on necessary capital expenditures, “value-engineering” the attractions in a way
 3 that deviated from the approved designs, and resulting in inferior quality that was not
 4 “first-class, world-class.” For example, in December 2017, when reviewing in-process
 5 design development packages, Fox learned—without prior notice from Genting—that
 6 Genting had eliminated major show moments as part of a value engineering initiative
 7 on both the *Invasion of the Planet of the Apes* and *Alien vs. Predator: Descent into*
 8 *Darkness* attractions. This was an especially damaging choice for cost-cutting, since
 9 the attractions were supposed to be two of the premier, anchor attractions at the Park.
 10 Amd. No. 2, Ex. F (designating the attraction in a special tier of “first-class, world-
 11 class level principal attractions”). It also caused several months of delay as the
 12 attractions had to be reworked.

13 **61.** Similarly, on the *Ice Age*-based attraction called *Expedition Thin Ice*,
 14 Genting attempted to cut corners by reducing the movement functions of several dozen
 15 animatronic figures in the ride, resulting in a low-quality appearance that did not
 16 approach the “first-class” standards set forth in the agreement. As a result, Genting
 17 was forced to send the animatronics back to the vendor, which resulted in a delay of a
 18 few months.

19 **62.** In addition, as Fox warned Genting in its June 2018 presentation to
 20 Genting’s President and executives, the extensive rework required by Genting’s failure
 21 to adhere to approved designs, and its decision to build without approved designs in
 22 place, wasted a substantial percentage of its capital investment. This deprived Fox of
 23 the promised value that it was entitled to receive from Genting’s capital investment in
 24 the Park.

25 **4. Genting’s Failure To Professionally Manage the Project.**

26 **63.** While many of Genting’s delays and failures can be traced to its
 27 construction processes, capricious design changes, and failure to obtain approval
 28 before building, nearly all aspects of the project were adversely affected by Genting’s

1 failure to engage competent, professional project management talent and follow best
 2 practices.

3 **64.** Genting’s failure to effectively manage the project was a breach of its
 4 obligation to “design, construct, operate and maintain” the Park “in accordance with
 5 the highest standards,” MOA § 3(d), as well as its obligation to “maintain quality
 6 control standards commensurate with industry practice for all approved elements of the
 7 [Park] during all stages of development and mounting of the [Park],” *id.* § 3(b)(ii).
 8 There are several examples of Genting’s project management shortcomings.

9 **65.** First, Genting’s project management operation was perpetually
 10 understaffed and lacked sufficiently experienced and/or sufficiently empowered
 11 leaders who could deliver a massive project on-time, on-quality, and on-budget. This
 12 problem spanned the life of the project, despite Genting’s repeated assurances that it
 13 would improve. For example, in April 2018, Genting told Fox that it was
 14 implementing yet another “new project management structure.” This late-stage, high-
 15 level breakup was a telltale sign that Genting knew that its project management team
 16 was still ineffective in 2018. And the change did not improve Genting’s performance,
 17 perhaps because the project managers were still subservient to Genting’s Chairman and
 18 Izwan Loke.

19 **66.** Second, Genting’s team did not have or did not utilize basic project
 20 management software. Whereas a professional project manager for a theme park of
 21 this size would typically employ a detailed project plan to manage the highly complex
 22 hierarchy of dependencies and dates, Genting’s project managers attempted to manage
 23 the project in Excel or other general purpose software.

24 **67.** In April 2018, two months before the rescheduled soft opening of the
 25 Park, Genting claimed that it had finally developed “a fully integrated master schedule
 26 for the entire project, which takes into account the milestones that need to be met in
 27 regards to facility completion, ride installation, etc. to achieve the overall schedule.”
 28 This kind of a project plan, also sometimes known as a “Gantt chart,” is a fundamental

1 tool that helps project managers at mega projects manage extremely complex
2 dependencies and timelines across multiple vendors and attractions. To be clear, the
3 creation of a master schedule for the plan five years into the project and months from
4 its scheduled completion falls well short of any professional standard. But in any case,
5 Genting's promises were once again hollow. Genting's most detailed Gantt chart
6 shared with Fox was no more than about a dozen pages long, presenting a superficial
7 level of specificity that underscored Genting's lack of professional competence and
8 attention to detail. Without a suitable project plan, Genting did not have a reliable
9 methodology to manage park development against its contractual milestones, and its
10 schedule estimates proved to be chronically optimistic and wrong.

11 **68.** Third, and relatedly, Genting failed to provide a system to manage the
12 approval process. Pursuant to the MOA, Fox was entitled to "approval rights over all
13 Fox Branded Theme Park content," for every attraction, at each key stage of
14 development, such as "Schematic Design," "Design Development," "Installation," etc.
15 MOA § 3(b)(ii). Genting would submit Requests for Approval packages ("RFAs") to
16 Fox to obtain these approvals. Despite the fact that there were thousands of packages
17 submitted for approval over the course of the project, with substantial edits and
18 feedback, Genting handled the management of all this back-and-forth on an ad hoc
19 basis rather than with a professional-grade approval tool. This was such a fundamental
20 gap that Fox was ultimately forced to provide Genting with credentials to Fox's own
21 application.

22 **69.** Fourth, Genting's team suffered from a significant lack of coordination,
23 and apparently lacked even basic tools for coordination such as shared electronic
24 drives. As a result, Genting's art directors often did not share assets with other
25 Genting team members, and Fox was asked repeatedly for assets that it had already
26 provided. Genting's team also lacked insight into the status of Genting's own internal
27 work product. This repeatedly caused problems, such as Genting's premature
28 submission of certain graphic artwork that did not match the current designs from its

1 own art directors. Fox repeatedly implored Genting to better manage this process as it
 2 became clear that Genting's disorganization was causing unnecessary delay in lost
 3 review time and RFA rejections. Fox's advice went unheeded.

4 **70.** Fifth, many Genting project team members lacked professional-grade
 5 tools for electronic communication and distribution of large art files, relying instead on
 6 their personal computers and Gmail accounts. Without these standard business
 7 resources, Genting's team members were often unable to send and receive the large
 8 files that are fundamental to theme park development. In addition, Genting lost access
 9 to important documents when these team members left the company and/or project.

10 **71.** As a result of Genting's failure to provide competent project management
 11 personnel, methodology, and tools, Genting's team was chronically disorganized and
 12 lacked accurate information about the status of the project. These shortcomings had
 13 deleterious effects on both project quality and schedule.

14 **5. Genting's Failure To Meet Key Milestone Deadlines.**

15 **72.** The inevitable result of Genting's numerous quality and project
 16 management failures was extensive delays, which caused Genting to fail to achieve the
 17 Key Milestones that were "of the essence" of the MOA.

18 **73.** Genting's failure to meet those Key Milestones is obvious on the face of
 19 the contract and calendar and is not seriously in dispute. Genting has already missed
 20 two contractual Milestone deadlines, for completion of Design Development and Soft
 21 Opening, and was inevitably going to miss a third, for the Official Opening.

22 **a. First Breach: Design Development Milestone (March 1, 2018):**

23 Genting breached its first Key Milestone deadline when it failed to
 24 complete submission of detailed design development plans of the Park for
 25 final approval by Fox. Amd. No. 2, § 2(e)(i)(C). It is indisputable that
 26 Genting missed this Milestone. Indeed, in meetings between Fox and
 27 Genting executives on March 13 and 14, 2018, after the deadline had
 28 already passed, Genting conceded that the overwhelming majority of the

1 design development plans had still not been submitted to Fox and would
2 not be submitted for months to come. Genting asked for more time, and
3 proposed a revised schedule that would push the submission deadline to
4 May 1, 2018. However, even at the point of termination more than six
5 months later, Genting had still not submitted design development plans
6 for final approval for most attractions. In fact, at the time of termination,
7 fewer than five attractions had design development plans that were fully
8 approved. The fact that Genting's executives thought in March that they
9 would have final design development plans submitted within about 1.5
10 months, but were not even close more than 6 months later, underscores
11 the extent to which they fundamentally failed to professionally manage or
12 understand the Park.

13 b. **Second Breach: Soft Opening Milestone (June 30, 2018):** Genting's
14 second breach of the MOA's Key Milestone deadlines occurred when it
15 failed to complete the Soft Opening of the Park (which required public
16 opening 80% of the total attractions) by June 30, 2018. MOA §§ 1(r);
17 3(a)(i)(E). It is indisputable that Genting missed this Milestone. During
18 the course of negotiations on a potential third amendment, Genting
19 initially proposed to push the Soft Opening date to December 1, 2018,
20 before later proposing April 1, 2019, and eventually proposing that the
21 parties should eliminate the Soft Opening Milestone altogether
22 (presumably because Genting realized that it could not credibly commit to
23 achieve a date).

24 c. **Third Breach: Official Opening (January 1, 2019):** Finally, at the time
25 that Fox terminated the MOA, it was also clear that Genting was going to
26 miss the Official Opening Milestone date, as Genting concedes in its
27 Complaint. *See* Genting Compl. ¶ 57 (admitting that it "had become
28 clear" in Spring 2018 that the Milestone was not achievable). During the

1 course of negotiations on a potential third amendment, Genting initially
 2 proposed to push the Official Opening Milestone date to March 5, 2019,
 3 before later proposing December 31, 2019, and eventually proposing that
 4 the parties should eliminate the Official Opening Milestone altogether
 5 (presumably because Genting realized that it could not credibly commit to
 6 achieve a date).

7 **74.** Thus, at the time of termination, Genting had failed to achieve two
 8 required Key Milestones, and was aware that it would not achieve a third, as set forth
 9 in the table below.

Key Milestone	MOA (6/13)	Amd. No. 1 (6/14)	Amd. No. 2 (6/17)	Complete at date of termination? (11/18)
Initial Designs	11/13	8/14	N/A	Yes
Design Development	1/14	1/15	3/18	NO
Construction	3/14	2/15	2/15	Yes
Soft Opening	5/16	1/17	6/18	NO
Official Opening	6/17	6/17	1/19	NO (anticipated)

19 **75.** The MOA provides that Genting bears responsibility for managing Park
 20 development and achieving the Key Milestones. Indeed Genting's obligation to
 21 achieve the Milestones was "of the essence of this Agreement." MOA § 3(a)(i).

22 **76.** The MOA provides that "Fox may elect in its sole discretion to terminate
 23 this Agreement" if "any of the above milestones are not met due to any delay, action
 24 or omission on the part of GENM" or "the Soft Opening of the Fox Branded Theme
 25 Park fails to occur prior to the Opening Date." MOA § 3(a)(ii) (emphasis added). As
 26 such, Genting's failure to "soft open" the Park by June 2018 gave Fox the right to
 27 terminate the agreement without regard to whether Genting was at fault.
 28

1 **77.** In any event, there can be no serious question that Genting bore
 2 responsibility for these delays, in light of the many egregious project management and
 3 quality failures described above—some of which individually caused delays of several
 4 months.

5 **78.** Genting’s efforts to blame Fox approvals for its delays are wholly
 6 inconsistent with the objective facts. During the time period following Amendment
 7 No. 2, Genting made several hundred submissions for Fox’s approval. Fox addressed
 8 more than 95% of Genting’s submissions within its 10 Business Days target,⁸ with an
 9 average response time of about 7 days.

10 **79.** Thus, there were no “repeated unreasonable delays by Fox in exercising
 11 its approval rights,” much less “repeated unreasonable delays” that “directly caused”
 12 Genting to miss a Milestone. Fox was therefore entitled to terminate the MOA “in its
 13 sole discretion.” MOA § 3(a)(ii).

14 **E. Fox’s Good-Faith Attempt To Salvage the Park with Another Amendment
 15 Is Unsuccessful.**

16 **80.** Despite Fox’s unequivocal rights to cancel, and the fact that Genting had
 17 now struck out on three consecutive sets of deadlines—the MOA, the First
 18 Amendment, and the Second Amendment—Fox attempted to negotiate in good faith
 19 for a Third Amendment that would allow the project to go forward with new deadlines
 20 but with additional protections for Fox to reflect its mounting concerns about
 21 entrusting its brand to a partner that had repeatedly shown it could not be trusted.

22 **81.** Genting’s responses made clear that Fox’s fears were correct and that
 23 Genting had no intention of operating a first-class Park, much less one with Fox’s
 24 approval. For example, in exchange for a small increase in Fox’s guarantee, Genting
 25 proposed an extension that would, among other things, limit the number of “first-class,

27 **⁸** Genting was presented with this data as of June 2018, prior to termination. It neither
 28 disputed the data nor presented any alternate statistics.

1 world-class principal attractions” that Genting had to open to meet its Soft and Official
2 Opening Milestone deadlines—a proposal so extreme that Genting would not have had
3 to open a single anchor attraction for the Soft Opening. This proposal only confirmed
4 to Fox that Genting could not meet its basic commitments, and could not be trusted to
5 deliver a quality product for the most important attractions at the Park, much less
6 protect Fox’s intellectual property generally.

7 **82.** After extensive negotiations, in June 2018, Fox proposed two options to
8 Genting, which reflected its substantial skepticism about Genting’s capability as a
9 steward of Fox’s valuable intellectual property rights, but also a willingness to let the
10 parties gracefully exit from the dispute. The first option would have added a gate
11 royalty to compensate Fox for the growing risk to its brand, with a gate royalty
12 minimum to begin upon Genting’s Official Opening Key Milestone date.
13 Alternatively, the second option would have facilitated the inclusion of non-Fox
14 intellectual property from other licensors, but required the Park to take a more generic
15 name (thereby mitigating the substantial risks to the Fox brand from ongoing schedule
16 and quality problems).

17 **83.** Genting sat on Fox’s proposal for some time, leading Fox to threaten
18 termination if Genting did not respond by September. Ultimately, Genting rejected
19 both of Fox’s compromises, and instead responded with another extreme and
20 unworkable proposal: a complete elimination of the Key Milestone deadlines for both
21 the Soft and Official Openings (which, again, were “the essence” of the MOA), a
22 reduction in the number of world-class attractions required at the time of the Official
23 Opening, an extension of the term of the MOA, and a dramatic reduction in Fox’s
24 approval rights (which, again, were central to the Park’s success), all in return for a
25 lump sum payment of \$1 million, which would not be payable until Genting opened
26 the Park.

1 **F. Fox Terminates the MOA.**

2 **84.** Faced with pervasive unresolved quality problems and delays that
 3 Genting was not taking steps to resolve, and unable to come to terms on a good-faith
 4 amendment that might salvage the parties' relationship, Fox was left with no choice
 5 but to terminate the MOA, which it promptly did. On October 4, 2018, Fox provided
 6 Genting with written notice that Genting was in default of its obligations and that the
 7 MOA would terminate pursuant to its terms in 30 days (the "Notice of Default").

8 **85.** On November 2, 2018, Fox provided Genting with a formal Notice of
 9 Termination, which reminded Genting of the impending termination, effective
 10 November 3, 2018 (the "Notice of Termination").⁹

11 **86.** Once the MOA terminated on November 3, 2018, Genting was
 12 immediately required to cease all use of Fox property in connection with the Park.
 13 Fox's Notice of Termination also laid out these deadlines. For example, Genting was
 14 required to "[i]mmediately cease operation of all attractions in the Park until all Fox
 15 property is removed," MOA § 12(a)(i), and to "remove all signage utilizing any Fox
 16 property from the Park, the First World Theme Park, the Resort, and any Authorized
 17 Retail Outlets," by December 4, 2018. *Id.* § 12(a)(ii). Genting was also required to
 18 "[i]mmediately cease all sale of Fox merchandise and provide a statement of all
 19 merchandise that Genting has on hand and a description of all advertising and all
 20 promotional materials related to this merchandise," by December 4, 2018. *Id.* § 12(b).
 21 To date, Genting has failed to provide such an inventory.

22 **87.** As a result of the termination, "any and all payments of any Development
 23 Fees, License Fees, Guarantee Amounts or Royalties then or later due from [Genting]"
 24 were "immediately due and payable in full." MOA § 11(b), Amd. No. 2, § 2(c)(i).

25
 26 ⁹ Fox provided Genting with the Notice of Default pursuant to Section 11(b) of the
 27 MOA on October 4, 2018 (Pacific Daylight Time) corresponding to October 5, 2018
 28 (Malaysian Standard Time). Accounting for differences in time zones, the MOA
 officially terminated as of November 3, 2018 (Pacific Daylight Time) or November 4,
 2018 (Malaysian Standard Time).

1 Fox's Notice of Termination demanded that Genting pay \$9,000,000 in Annual
 2 License Fees, Amd. No. 2, § 2(g), \$37,216,667 in Guarantee Amounts or Royalties,
 3 Amd. No. 2, § 2(d)(ii)(A)(4), and \$250,981.39 for outstanding travel reimbursement,
 4 MOA §§ 3(b)(i)(F)(2), 3(b)(iii)(C); Amd. No. 2, § 2(i). To date, Genting has paid only
 5 \$54,825.21 towards travel reimbursement.

6 **88.** The MOA provided that past due Royalty payments would accrue "at the
 7 then-current prime rate plus three percent (3%), computed from the original due date
 8 until paid." MOA § 5(e).

9 **G. Genting Fails To Comply with Its Termination Obligations.**

10 **89.** The termination provision in the Agreement included strict deadlines for
 11 Genting to cease using Fox's intellectual property. For example, Genting was required
 12 to "immediately . . . cease operation of all attractions within the Fox Branded Theme
 13 Park until all Fox Property is removed therefrom," and to "remove all signage utilizing
 14 any Fox Property from the Fox Branded Theme Park, the First World Theme Park, the
 15 Resort and the Authorized Retail Outlets within thirty (30) days." MOA § 12(a).
 16 Fox's Notice of Termination also clearly sets forth the schedule associated with these
 17 obligations.

18 **90.** On information and belief, Genting failed to timely comply with these
 19 obligations. For example, on information and belief, Genting failed to remove all
 20 signage for the retail store by December 4, 2018.

21 **91.** Genting also had deadlines associated with Park merchandise. Within 30
 22 days of termination, Genting was required to deliver a merchandise inventory to Fox
 23 "indicating the number and description of Merchandise items on hand, together with a
 24 description of all advertising and promotional materials relating thereto." MOA
 25 § 12(b). However, to date, Genting has failed to provide any such inventory.

COUNT I

(Breach of Contract)

92. The Fox Counter-Plaintiffs incorporate each of the foregoing Paragraphs as though fully set forth herein.

93. The Fox Counter-Plaintiffs and Genting entered into a binding and enforceable contract, as amended, to develop the Park.

94. The Fox Counter-Plaintiffs materially performed all of their obligations under the MOA—or, in the alternative, have been excused from any such further performance as a result of Genting’s material breaches of the MOA.

95. All conditions requiring Genting's full performance under the MOA have occurred.

96. Nevertheless, as set forth above, Genting materially (or anticipatorily) breached its contractual obligations under the MOA, including, but not limited to:

a. **Quality:** Genting failed to “design, construct, operate and maintain [the Park] . . . in accordance with the highest standards” comparable in quality to other parks operated by Genting, including Universal Studios Singapore, as required pursuant to MOA §§ 3(c)-(d). Genting also failed to “maintain quality control standards commensurate with industry practices for all approved elements of the [Park] during all stages of development.” MOA § 3(b)(ii). These failures each provided grounds for termination pursuant to MOA §§ 11(a)(i),(vii).

b. **Milestones:** Genting failed to timely achieve the Key Milestones for Design Development, Soft Opening, and Official Opening, due to numerous mismanagement problems, including its failure to provide competent project management, and also repeated quality problems that required time-consuming redesign and rework. MOA § 3(a). This provided grounds for termination pursuant to MOA §§ 3(a)(ii), 11(a)(i).

97. As a direct and proximate result of Genting's breaches of the MOA, Fox was entitled to exercise its right to terminate the MOA and receive all Annual License Fees and Guarantee Amounts/Royalties set forth in the MOA, as well as the outstanding expenses that Genting has failed to reimburse. In addition, Fox has suffered and will suffer other damages, including damage to its brand as a result of Genting's failure to deliver a highly anticipated Park, and including attorneys' fees and costs in connection with this matter, in an amount to be determined by this Court.

COUNT II

(Breach of the Covenant of Good Faith and Fair Dealing)

98. The Fox Counter-Plaintiffs incorporate each of the foregoing Paragraphs as though fully set forth herein.

99. There is a covenant of good faith and fair dealing implied in every contract. This implied covenant requires each contracting party to refrain from any conduct that could injure the rights of the other to receive the benefits of the contract.

100. Genting breached the covenant of good faith and fair dealing implied in the MOA by, among other things, unfairly: (1) failing to meet the MOA's Key Milestone deadlines while misleading Fox with overly optimistic reports on progress and status, and excluding Fox personnel from key meetings; (2) seeking to circumvent Fox's important approval rights by allowing (and actually endorsing) construction even without the required prior approvals from Fox, including with knowledge that such conduct would lead to a "fight" with Fox later regarding quality and/or Fox's approval rights.

PRAAYER FOR RELIEF

WHEREFORE, the Fox Counter-Plaintiffs pray for judgment as follows:

1. For monetary damages in an amount to be proven at trial, including, but not limited to, the \$9,000,000 in Annual License Fees, as well as \$37,216,667 in Guarantee Amounts/Royalties, and \$196,156 in travel reimbursements that Fox is

entitled to under the terms of the MOA, plus interest, as well as consequential damages;

2. For reasonable costs of the suit incurred herein, including reasonable attorneys' fees, to the full extent recoverable under applicable law; and

3. For such other and further relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

The Fox Counter-Plaintiffs hereby demand trial by jury on all issues so triable.

Dated: January 22, 2019

GIBSON, DUNN & CRUTCHER LLP

By: /s/ Scott A. Edelman
Scott A. Edelman

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Century Fox Film Corp., FoxNext, LLC, and
Defendant Twenty-First Century Fox, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on January 22, 2019, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system, which will send a notice of electronic filing to CM/ECF participants in this case.

/s/ Nicholas G. Gamse
Nicholas G. Gamse